

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, STATE OF OHIO

THE STATE OF OHIO, ex rel.
LAWRENCE BRESLER
2671 Haddam Rd.,
Cleveland, OH 44120

and

ROSEMARIE E. DRISCOLL
4605 Bridge Ave.
Cleveland, OH 44102

and

JESSE H. FALEY
1444 West 81st St.
Cleveland, OH 44102

and

YVONKA M. HALL
18115 Harvard Ave.
Cleveland, OH 44128

and

JEFFREY D. JOHNSON
13508 Larchmere Blvd.
Cleveland, OH 44120

and

DIANA KING
12526 Griffing Ave.
Cleveland, OH 44120

and

CHRIS KNESTRICK
3320 Monroe Ave.
Cleveland, OH 44113

and

Judge: DICK AMBROSE

CV 19 916774

Original Action in Mandamus

FILED
2019 JUN 14 A 10 32
CLERK OF COURTS
CUYAHOGA COUNTY

JEFFREY B. MIXON
1188 East 86th St.
Cleveland, OH 44108

and

CHRISTOPHER STOCKING
6404 Bridge Ave.
Cleveland, OH 44102

and

DARRICK WADE
3750 Fleming Ave., #303
Cleveland, OH 44115

RELATORS,

v.

PATRICIA BRITT
City Clerk, Clerk of Counsel
City of Cleveland, Office of Council
601 Lakeside Ave., Rm 216
Cleveland, OH 44114

RESPONDENT.

ORIGINAL ACTION IN MANDAMUS

Marc E. Dann (0039425)
Donna Taylor-Kolis (002960)
DANNLAW
P.O. Box 6031040
Cleveland, OH 44103
(216) 373-0539 – Main Office
(216) 373-0536 - Fax
notices@dannlaw.com
Counsel for Relators

Now Comes, Relators, in the capacity as taxpayers, and the Committee of the Petitioners pursuant to the City of Cleveland Charter, Section 49 and hereby submits by and in the name of the State of Ohio the following Complaint for Writ of Mandamus.

JURISDICTION AND PARTIES

1. This original action in mandamus seeks a judicial determination by this Court as to whether the Clerk of Council (“the Clerk”) for the city of Cleveland, Ohio (“the City”) should be compelled to determine the sufficiency of a petition for initiative under Sections 49, 51, and 54 of the City of Cleveland Charter (“the Charter”).

2. This Court has original jurisdiction over this mandamus action in accordance with the Ohio Revised Code Section 2731.02.

3. Since the Director of Law for the City has refused to execute her powers and responsibilities to order Respondent Britt to accept the petitions and forward them to City Council, the Relators have the right to bring this action.

4. All of the Committee Members are residents and registered voters of the City of Cleveland, Cuyahoga County and the State of Ohio.

5. Since the Law Director of the City has declined to direct the Clerk to perform her duties, the Relators are exercising their rights to protect the public and the democratic process by initiating this mandamus action.

MANDAMUS

6. Respondent, Patricia J. Britt, is the Clerk of the City of Cleveland, City Council, and is being sued in her official capacity only. Among other things, the Clerk has the duty under Chapter 7 of the Charter of the City to determine the sufficiency of a petition for initiative submitted under Sections 49, 51, and 54. A true and correct copy of Chapter 7 of the Charter

relative to the initiative and referendum petitions is attached and marked as Exhibit 1.

FACTS

7. The City is a municipal corporation and has adapted a Charter under Section 7, Article XVIII of the Ohio Constitution to “exercise there under all powers of local self-government.”

8. Among other things, the Charter contains provisions relating to filing of initiative and referendum petitions as is contained in Exhibit 1.

9. In the instant matter, the Charter provides for the filing of initiative petitions:

§ 49 Ordinances by Initiative Petition

Any proposed ordinance may be submitted to the Council by petition signed by at least five thousand (5,000) qualified electors of the City. All petition papers, circulated with respect to any proposed ordinance, shall be uniform in character and shall contain the proposed ordinance in full, and have printed thereon the names and addresses of at least five electors of the City who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named.
(Effective November 8, 1994)

§ 50 Signing Petition

Each signer of a petition shall sign his or her name in ink or indelible pencil, and shall place on the petition paper after the signer’s name his or her place of residence by street and number, or by other description sufficient to identify the place, and give the date when the signature was made. The signatures to any petition paper need not all be appended to one paper but on each separate paper the circulator shall indicate the number of signatures contained on the petition, and shall sign a statement made under penalty of election falsification that the circulator witnesses the affixing of every signature, that all signers were to the best of the circulator’s knowledge and belief qualified to sign, and that every signature is to the best of the circulator’s knowledge and belief the signature of the person whose name it purports to be.
(Effective November 4, 2008)

§ 51 Filing Petition

All papers comprising a petition shall be assembled and filed with the Clerk of the Council as one instrument by no later than 4:00 p.m. on a regular business day of the office of the Clerk. Within ten (10) days from the filing of a petition the Clerk shall ascertain whether it is signed by the required number of qualified electors. Upon the completion of the Clerk’s examination the Clerk shall endorse upon the petition a certificate of the result thereof.

(Effective November 4, 2008)

10. On or about April 2, 2019, the Relators in accord with Sections 49, 50, and 51 did cause to be filed with the Clerk 527 petition papers proposing an ordinance to amend certain sections of the Codified ordinances of Cleveland Ohio regarding lead hazards. *See Attached Exhibit 2.*

11. On or about April 2, 2019, the Clerk determined the initiative petition was valid on its face and therefore accepted as a valid initiative petition. *See Attached Exhibit 2.*

12. On or about April 2, 2019, the Clerk notified the Relators that pursuant to the Charter, she would ascertain “the sufficiency” of the petition. *See Attached Exhibit 2.*

13. The Charter requires that the Clerk within 10 days from the filing of the petition ascertain whether it is signed by the required number of elections. *See Exhibit 1, § 51.*

14. On April 12, 2012 in contravention of her powers, and in dereliction of her duties, the Clerk notified the Relators that “even though the initiative Petetion(s) (sic) contained a sufficient number of signatures, the fact that it does not contain the statutory required language caused it to be invalid as a matter of law.” *See Exhibit 3.*

15. The Clerk, as a general rule, when reviewing the sufficiency of a petition, has limited discretion to review matters of form and no authority to review matters of substance. Such as the proposed legality of the proposed measure. *See State ex rel. Langhery v. Britt, 151 Ohio St. 3rd 227, at 230.*

16. On April 10, 2019, the Cuyahoga County Board of Elections advised the Clerk that the issue of signatures, and not the petitions, is currently before the board. *See Exhibit 4.*

17. Pursuant to the Charter, since the Relators retained the requisite number of signatures the Clerk was required to issue a certificate showing the petitions to be valid and submit the proposed ordinance to Council at the next regular meeting. *See § 54 of the Charter.*

18. On May 8, 2019, Marc Dann, an attorney for the Relators sent a written letter to the Law Director for the City of Cleveland and requested that she exercise her authority under R.C. 733.58 and the Charter § 89 to seek a Writ of Mandamus to compel the Clerk to accept the petitions and verify that the correct number of signatures were included. *See Exhibit 5.*

19. On May 20, 2019, the Law Director rejected this lawful request. *See Exhibit 6.*

20. Accordingly, the Relators request this Court issue a Writ of Mandamus to compel Patricia Britt, in her capacity as Clerk of Council to determine that the required number of qualified electors signed the petitions and a certificate of the results, therefore, in accordance with the law.

COUNT ONE

21. Relators hereby incorporate by reference all of the allegations set forth in paragraphs 1-20 as fully restated herein.

22. A Writ of Mandamus is the proper remedy to compel a municipal Clerk to ascertain the sufficiency of an initiative petition under a municipal Charter.

23. To obtain the Writ, the Relators must (1) establish a clear legal right to request relief (2) a corresponding duty on the part of the Respondent, and (3) the law of an adequate remedy at law.

24. Respondent has a clear legal duty under Sections 51 and 54 of the Charter to determine the sufficiency of the initiative petitions by ascertaining the required number of valid signatures for qualified elections has been obtained.

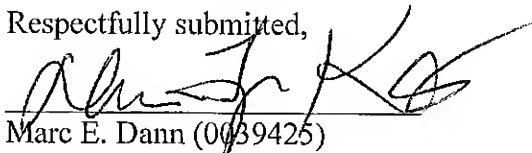
25. Respondent has failed to carry out this mandating duty.

26. There is no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, the Relators respectfully submit that the Court issue a Writ of Mandamus compelling the Clerk to determine the initiative petition contained the requisite number of signatures for qualified elections under Section 51 of the Charter, and to certify this fact to the Cleveland City Council in accordance with Sections 51 and 54 of the Charter. Further, grant any relief that may be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marc E. Dann', is written over a horizontal line.

Marc E. Dann (0039425)

Donna Taylor-Kolis (002960)

DANNLAW

P.O. Box 6031040

Cleveland, OH 44103

(216) 373-0539 – Main Office

(216) 373-0536 - Fax

notices@dannlaw.com

Counsel for Relators

VERIFICATION

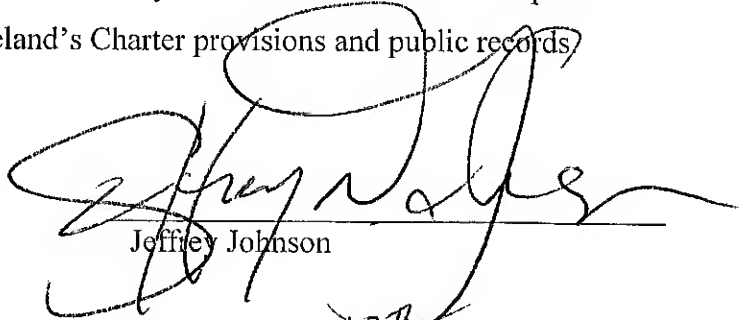
STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

AFFIDAVIT OF JEFFREY JOHNSON

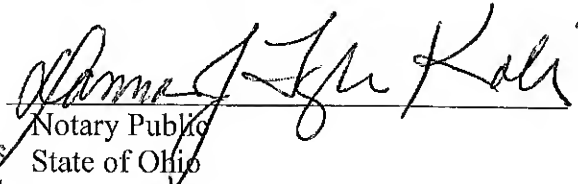
I have reviewed the foregoing Complaint for Writ of Mandamus and an verify that all of the facts set forth are true and correct.

I have reviewed and can verify that each and every exhibit attached to the Complaint are true and accurate copies of The City of Cleveland's Charter provisions and public records.

Affiant further sayeth naught.


Jeffrey Johnson

Sworn to and subscribed before me by Jeffrey Johnson on June 13th, 2019.


Notary Public
State of Ohio

DONNA TAYLOR-KOLIS
Notary Public, State of Ohio
My Comm. has no expiration date.
Section 147.03 R.C.

[seal]

EXHIBIT 1

CHAPTER 7 – INITIATIVE AND REFERENDUM

- § 49 Ordinances by Initiative Petition
- § 50 Signing Petition
- § 51 Filing Petition
- § 52 Amending Petition
- § 53 Insufficiency of Petition
- § 54 Submitting Proposed Ordinances
- § 55 Action on Proposed Ordinance
- § 56 Ordinance Form Certification after Council Action
- § 57 Ordinance Certification and Submission for Vote
- § 58 Repealing Ordinances
- § 59 The Referendum
- § 60 Petition for Referendum
- § 61 Petition for Referendum Text
- § 62 Initiative Ordinances Subject to Referendum

§ 49 Ordinances by Initiative Petition

Any proposed ordinance may be submitted to the Council by petition signed by at least five thousand (5,000) qualified electors of the City. All petition papers, circulated with respect to any proposed ordinance, shall be uniform in character and shall contain the proposed ordinance in full, and have printed thereon the names and addresses of at least five electors of the City who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named.

(Effective November 8, 1994)

§ 50 Signing Petition

Each signer of a petition shall sign his or her name in ink or indelible pencil, and shall place on the petition paper after the signer's name his or her place of residence by street and number, or by other description sufficient to identify the place, and give the date when the signature was made. The signatures to any petition paper need not all be appended to one paper but on each separate paper the circulator shall indicate the number of signatures contained on the petition, and shall sign a statement made under penalty of election falsification that the circulator witnesses the affixing of every signature, that all signers were to the best of the circulator's knowledge and belief qualified to sign, and that every signature is to the best of the circulator's knowledge and belief the signature of the person whose name it purports to be.

(Effective November 4, 2008)

§ 51 Filing Petition

All papers comprising a petition shall be assembled and filed with the Clerk of the Council as one instrument by no later than 4:00 p.m. on a regular business day of the office of the Clerk. Within ten (10) days from the filing of a petition the Clerk shall ascertain whether it is signed by the required number of qualified electors. Upon the completion of the Clerk's examination the Clerk shall endorse upon the petition a certificate of the result thereof.

(Effective November 4, 2008)

§ 52 Amending Petition

If the Clerk's certificate shows that the petition is insufficient he shall at once notify each member of the committee of the petitioners, hereinbefore provided for, and the petition may be amended at any time within fifteen (15) days from the date of the Clerk's certificate of examination, by filing with the Clerk an additional petition paper or papers in the same manner as provided for the original petition.

(Effective November 9, 1931)

§ 53 Insufficiency of Petition

Upon the filing of such an amendment the Clerk shall, within ten (10) days thereafter, examine the amended petition and attach thereto his certificate of the result. If still insufficient, and if no amendment shall have been filed, the Clerk shall file the petition in his offices and shall notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

(Effective November 9, 1931)

§ 54 Submitting Proposed Ordinances

When the certificate of the Clerk shows the petition to be sufficient, he shall submit the proposed ordinance to the Council at its next regular meeting and the Council shall at once read and refer the same to an appropriate committee, which may be the committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the proposed ordinance to the Council, with its recommendations thereon, not later than sixty days after the date on which the proposed ordinance was submitted to the Council by the Clerk.

(Effective November 9, 1931)

§ 55 Action on Proposed Ordinance

Upon receiving the proposed ordinance from the committee, the Council shall at once proceed to consider it and shall take final action thereon within thirty (30) days from the date of such committee report. If the Council rejects the proposed ordinance, or passes it in a form different from that set forth in the petition, the committee of the petitioners may require that it be submitted to a vote of the electors of the City in its original form, or that it be submitted to a vote of the electors of the City with any proposed change, addition or amendment, which was presented in writing either at a public hearing before the committee to which such proposed ordinance was referred, or during the consideration thereof by the Council.

(Effective November 8, 1994)

§ 56 Ordinance Form Certification after Council Action

When an ordinance proposed by petition is to be submitted to a vote of the electors of the City the committee of the petitioners shall certify that fact and the proposed ordinance, in the form in which it is to be submitted to the Clerk of the Council within ten (10) days after the final action on such proposed ordinance by the Council.

(Effective November 8, 1994)

§ 57 Ordinance Certification and Submission for Vote

Upon receipt of the certificate and certified copy of the proposed ordinance, the Clerk shall certify the fact to the Council at its next regular meeting. If an election is to be held not more than six months nor less than sixty (60) days after the receipt of the Clerk's certificate by the Council, the proposed ordinance shall then be submitted to a vote of the electors of the City. If no election is to be held within the time aforesaid, the Council may

provide for submitting the proposed ordinance to the electors of the City at a special election to be held not sooner than sixty days after the receipt of the Clerk's certificate. If a supplemental petition, signed by five thousand (5,000) qualified electors, in addition to those who signed the original petition, be filed with the Clerk asking that the proposed ordinance be submitted to the voters at a time indicated in such petition, the Council shall provide for a special election at the time. The sufficiency of any such supplemental petition shall be determined, and it may be amended in the manner provided for original petitions for proposing ordinances to the Council. If no other provision be made as to the time of submitting a proposed ordinance to a vote of the electors of the City, it shall be submitted at the next election.

(Effective November 4, 2008)

§ 58 Repealing Ordinances

Proposed ordinances for repealing any existing ordinance or ordinances in whole or in part may be submitted to the Council as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors of the City shall be published and may be amended or repealed by the Council as in the case of other ordinances.

(Effective November 8, 1994)

§ 59 The Referendum

No ordinance passed by the Council, unless it be an emergency measure, shall go into effect until thirty (30) days after its final passage by the Council. If at any time within said thirty (30) days, a petition signed by electors equal in number to ten percent (10%) of the total vote cast at the last preceding regular Municipal election of the City be filed with the Clerk of the Council requesting that the ordinance, or any specified part thereof, be repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. The petition shall be prepared and filed in the manner and form prescribed in the foregoing sections of this Charter for an initiative petition for an ordinance.

(Effective November 4, 2008)

§ 60 Petition for Referendum

When such a petition is filed with the Clerk of the Council he shall determine the sufficiency thereof in the manner provided in this Charter for an initiative petition for an ordinance. If the petition be found sufficient, or be rendered sufficient by amendment as provided in Sections 52, 53 and 54 hereof, the Clerk shall certify that fact to the Council, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed the Council shall provide for submitting it to a vote of the electors of the City, and in so doing the Council shall be governed by the provisions of Sections 57 and 66 hereof respecting the time of submission and manner of voting on ordinances proposed to the Council by petition.

(Effective November 8, 1994)

§ 61 Petition for Referendum Text

Referendum petitions need not contain the text of the ordinances, the repeal of which is sought but they shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the Council.

(Effective November 9, 1931)

§ 62 Initiative Ordinances Subject to Referendum

Ordinances submitted to the Council, by initiative petition and passed by the Council without change, or passed in an amended form and not required to be submitted to a vote of the electors of the City by the committee of the petitioners, shall be subject to the referendum in the same manner as other ordinances.

(Effective November 8, 1994)

EXHIBIT 2



CITY OF CLEVELAND
Office of the Council

www.clevelandcitycouncil.org

Patricia J. Britt, MSW, MMC
CITY CLERK, CLERK OF COUNCIL

RECEIPT

On April 2, 2019, I, Patricia J. Britt, have received 527 petition papers proposing an ordinance to amend certain sections of the Codified Ordinances of Cleveland, Ohio regarding lead hazards.

Pursuant to the Charter of the City of Cleveland, an initiative petition must be signed by at least 5,000 electors of the City. After examination of the petition papers, I have determined that the petition papers are valid on their face and, therefore, are accepted as a valid initiative petition.

Pursuant to the Charter, the sufficiency of the petition shall be determined within 10 days from the date the Initiative petition was filed. I will certify the petition sufficient or insufficient no later than Friday, April 12, 2019.

Patricia J. Britt
City Clerk, Clerk of Council

4/2/19
Date

City Hall 601 Lakeside Avenue N.E., Room 216, Cleveland, OH 44114 • Phone (216) 664-4551 • Fax (216) 664-3337
Email: pbritt@clevelandcitycouncil.org

EXHIBIT 3



CITY OF CLEVELAND
Office of the Council

www.clevelandcitycouncil.org

Patricia J. Britt, MSW, MMC
CITY CLERK, CLERK OF COUNCIL

April 12, 2019

COMMITTEE OF THE PETITIONERS:
"AN ORDINANCE BY INITIATIVE PETITION TO PROTECT THE CHILDREN OF
CLEVELAND FROM POISONING BY REQUIRING RENTAL PROPERTIES TO BE
MADE SAFE FROM LEAD HAZARDS"

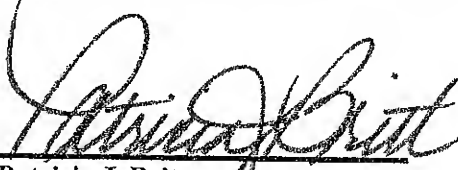
Lawrence Bresler, 2671 Haddam Rd., Cleveland, Ohio 44120
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Yvonka M. Hall, 18115 Harvard Ave., Cleveland, Ohio 44128
Jeffrey D. Johnson, 13508 Larchmere Blvd., Cleveland, Ohio 44120
Diana King, 2526 Griffing Ave., Cleveland, Ohio 44120
Chris Knestrick, 3320 Monroe Ave., Cleveland, Ohio 44113
Jeffrey B. Mixon, 1188 East 86th St., Cleveland, Ohio 44108
Christopher Stocking, 6404 Bridge Ave., Cleveland, Ohio 44102
Darrick Wade, 3750 Fleming Ave., #303, Cleveland, Ohio 44115

The Initiative Petition filed with the Clerk on April 2, 2019, does not contain election falsification language mandated by Ohio Revised Code Section 3501.38 (J) and therefore is rejected as facially invalid.

Election statutes are mandatory and must be strictly complied with. Even though the Initiative Petition contained a sufficient number of signatures, the fact that it does not contain the statutorily required language causes it to be invalid as a matter of law.

Revised Code Section 3501.38 General rules for petitions and declarations of candidacy.
All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating to them, be governed by the following rules:

...
(J) All declarations of candidacy, nominating petitions, or other petitions under this section shall be accompanied by the following statement in boldface capital letters: WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.


Patricia J. Britt
City Clerk, Clerk of Council

Date

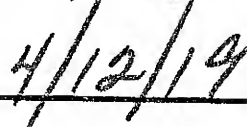


EXHIBIT 4



CUYAHOGA COUNTY BOARD OF ELECTIONS

Jeff Hastings
Chairman

Inajo Davis Chappell
Member

Robert S. Frost
Member

David J. Wondolowski
Member

Anthony W. Perlatti
Director

Shantiel H. Soeder
Deputy Director

April 10, 2019

Patricia J. Britt, Clerk of Council
Cleveland City Hall
601 Lakeside Avenue N.E., Room 216
Cleveland, OH 44114

Dear Patricia J. Britt,

On April 4, 2019, the Board of Elections received for signature examination an initiative petition from the Clerk of Cleveland City Council regarding lead poisoning conditions in rental units within the City. On April 9, 2019, Board staff concluded its examination and determined that the petition contains six thousand five hundred and thirty (6,530) valid signatures, substantially more than the five-thousand (5,000) signature minimum required by the City Charter.

However, the Board has some concerns regarding the petitions and the statutory requirement set forth in R.C. 3501.38(J). While the issue of the validity of the signatures, and not the petitions, is that which is currently before the Board, we wanted to bring this potential issue to your attention.

If you have any further questions, or would like to discuss, feel free to contact my office at (216) 443-3280.

Sincerely,

Anthony W. Perlatti
Director, Cuyahoga County Board of Elections

EXHIBIT 5



216-452-1026
Direct Telephone

Marc E. Dann
MDann@DannLaw.com
Email

216-373-0536
Fax

May 8, 2019

Barbara A. Langhenry
Director of Law
City of Cleveland
601 Lakeside Ave., Room 106

Sent via Certified Mail and email to blanghenry@city.cleveland.oh.us

Re: Taxpayer demand under R.C. 733.58, R.C. 73359, and the City of Cleveland Charter §§ 89-90 that the Clerk of Cleveland City Council accept petitions for a proposed ordinance to protect children from lead poisoning

Dear Director Langhenry:

I write on behalf of City of Cleveland taxpayers Lawrence Bresler, Rosemarie Driscoll, Jesse Faley, Yvanka Hall, Jeffrey Johnson, Diana King, Chris Knestrick, Jeffrey Mixon, Christopher Stocking and Darrick Wade ("Taxpayers") regarding the refusal of the Clerk of Cleveland City Council to accept petitions for a proposed ordinance by initiative petition that would protect Cleveland's children from lead poisoning.

I ask that you provide written assurance by May 20, 2019 that the Clerk of Council has accepted the Taxpayers' petitions for the proposed ordinance or, in the alternative, that your office has filed a writ of mandamus seeking to compel the Clerk of Council to perform her obligated duties.

- I. The City Charter provides for a process by which Taxpayers can seek to bring a proposed ordinance to City Council and, if necessary, to the voters of the City of Cleveland.**

Sections 49-58 of the Cleveland City Charter lay out a clear process through which qualified electors of the City of Cleveland may propose an ordinance by initiative petition. Under those provisions "any proposed ordinance may be submitted to the Council by petition signed by at least five thousand (5,000) qualified electors of the City." Charter of the City of Cleveland § 49.



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Once the signatures have been gathered:

All papers comprising a petition shall be assembled and filed with the Clerk of the Council as one instrument by no later than 4:00 p.m. on a regular business day of the office of the Clerk. Within ten (10) days from the filing of a petition the Clerk shall ascertain whether it is signed by the required number of qualified electors.

Charter of the City of Cleveland § 51. After confirming the number of signatures, the Clerk must “submit the proposed ordinance to the Council at its next regular meeting and the Council shall at once read and refer the same to an appropriate committee.” Charter of the City of Cleveland § 54. At that time, the City Council may review the legislation and, if the Council declines to pass the legislation, the electors have the right to submit the ordinance to a public vote at an upcoming election. Charter of the City of Cleveland § 57.

Each of these provisions is clear and unambiguous: the Clerk of City Council has a ministerial obligation to accept the petitions and ascertain whether a sufficient number of signatures was included. The law does not allow the Clerk to substantively analyze the bill or the electoral viability of the petition and the law certainly does not provide for the Clerk to find contrived reasons to refuse the petitions.

II. Taxpayers have properly used the Charter’s process to submit petitions to the Clerk of Cleveland City Council regarding a lead safe housing law.

Cleveland is in the midst of a lead poisoning crisis. Recent data from Case Western shows that more than a quarter of incoming kindergarteners have had elevated blood lead levels beyond the CDC’s recommended limits. In some school, the percentage of poisoned children is above 40%. These rates are two to three times higher than rates seen in Flint, Michigan at the height of their lead crisis.

It is well documented that lead poisoning causes profound psychological and behavioral health effects, including increase impulsivity, decreased academic achievement, and increased risk of interaction with the criminal justice system. In other words, Cleveland must address lead poisoning if it wishes to get to the root of the economic and health disparities that persist in our City.

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Although lead poisoning is a health problem, research tells us there is a housing solution. Currently Cleveland only tests properties for lead *after* a child has been poisoned. Taxpayers' proposed legislation would test rental homes *before* a child becomes sick. Preventative testing is in line with best practices adopted in other states and cities and it is mirrored in pending legislation at the federal level.

Taxpayers—along with other community activists—have been working to persuade Cleveland City Council to pass a comprehensive “lead safe” ordinance for years. However, they have had no success. As a result, Taxpayers began the ballot initiative process in January 2019. As required by the Charter, the group nominated representative electors—the ten Taxpayers on whose behalf this letter is written—and began collecting the required signatures. Again, as anticipated by the Charter, the Electors obtained thousands of signatures and properly brought them to the Clerk of City Council before 4:00pm on a regular business day. It is now the responsibility of the Clerk to accept the petitions and ascertain whether a sufficient number of signatures were included.

III. The Clerk of the City of Cleveland has no legal basis under which to refuse the Taxpayers' petitions.

The Ohio Supreme Court has made clear that “a city council has no authority to review the substance of a proposed ballot measure[,] ... [n]or can the city council assess the constitutionality of a proposal, because that role is reserved for the courts.” *State ex rel. Ebersole v. Powell*, 141 Ohio St.3d 17, 2014- Ohio-4283, 21 N.Ed.3d 274, ¶ 6, citing *State ex rel. Polcyn v. Burkhart*, 33 Ohio St.2d 7, 292 N.E.2d 883 (1973).

The Supreme Court has concluded time and time again that the City must perform their ministerial duties and may not make substantive determinations on the proposed legislation. The Court in *Ebersole* enumerated the following cases supporting this proposition:

See *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, 835 N.E.2d 1222, ¶ 30-31 (council clerk exceeded her authority by deciding that the initiative petition involved a subject that the village was not authorized to control by legislative action); *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 55, 641 N.E.2d 1075 (1994) (‘The city council's constitutional authority to review the sufficiency of petitions is limited to matters of form, not substance’); *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53, 572 N.E.2d 649 (1991) (council exceeded its authority by tabling initiative ordinance it opposed

May 8, 2019

Page 4

because once the form of the petition is approved, council must place it on the ballot).

More recently, the Clerk of Cleveland City Council lost another bid to refuse petitions. After the Clerk refused to accept petitions on the Q Deal Referendum, citing the unconstitutionality of submitting the emergency ordinance to a vote, the Ohio Supreme Court concluded that the Clerk had acted improperly. The Court wrote that the Clerk had “a clear legal duty to perform the ministerial function of her office—verifying the sufficiency of the petition signatures.” *State ex rel. Langhenry v. Britt*, 151 Ohio St.3d 227, 2017-Ohio-7172, ¶ 24. The referendum process and ordinance by initiative petition process are governed by the same sections of the City Charter. See Charter of the City of Cleveland §§ 51, 59.

If there had ever been any doubt, the Supreme Court’s decision in *Langhenry* makes clear that the Clerk must accept the petitions and perform her duties in determining the sufficiency of the signatures.

IV. Under R.C. 733.58, R.C. 733.59, and the City of Cleveland Charter §§ 89-90, the Director of Law is required to initiate a mandamus action seeking to compel the Clerk to accept the petitions.

Under Ohio law, “in case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty.” R.C. 733.58. This requirement is mirrored in § 89 of the City of Cleveland Charter (“In case any officer or commission fails to perform any duty required by law, the Director of Law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.”)

As required by the Charter, this letter hereby serves as the Taxpayer’s written request that the Law Department file a mandamus action seeking an order that the Clerk fulfill her obligations under the Charter. City of Cleveland Charter § 89-90. Additionally, as contemplated by R.C. 733.581, the Taxpayers hereby request to be named as a party defendant so that they may have the “right to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.” R.C. 733.581

V. If the Law Department fails to act by May 20, 2019, Taxpayers will seek all recourse available under law.



May 8, 2019

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As provided for under the Ohio Revised Code and the Cleveland City Charter, if the Law Department does not seek to compel the Clerk to fulfill her duties, the Taxpayers may initiate a Taxpayer's suit to compel the same. *See* R.C. 733.59; City of Cleveland Charter § 90. Moreover, Taxpayers will seek to be made whole by ensuring that the proposed legislation remains on track. *State ex rel. Meigs Cty. Home Rule Comm. v. Meigs Cty. Bd. Of Comm'rs*, 148 Ohio St. 3d 63, 2016-Ohio-5658, 68 N.E.3d 781 ¶19, citing *State ex rel. Stern v. Quattrone*, 68 Ohio St. 2d 9; 426 N.E.2d 1389 (1981) ("When the Board of Elections ultimately certifies the validity of a petition and [any] delay was not the fault of the initiative's supporters, a writ of mandamus will issue to place the matter on the ballot. Any other result would be unfair and thwart the constitutional right of initiative.")

The Clerk has an unambiguous duty under law to accept the petitions and verify whether the required number of signatures were included. Taxpayers will take all available steps to ensure that the Clerk fulfills that responsibility.

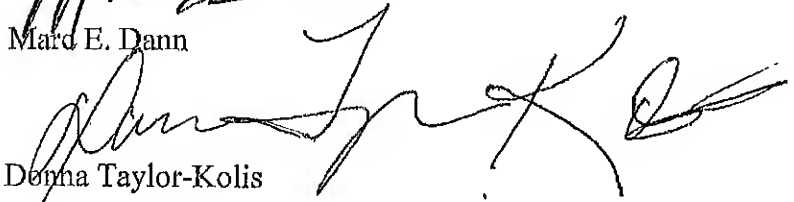
Finally, the Taxpayers would like to highlight the cynical and anti-democratic nature of the actions of the Clerk of Council. There is no higher form of democracy than the right of the people to petition the government. The people of the City of Cleveland wish to have their voices heard. At a time when a quarter of Cleveland's kindergartners have been found to have elevated blood lead levels, the people have the right to use the processes enshrined in law to bring a proposed ordinance to City Council and, if necessary, the ballot box. The Clerk and City Council are employed to serve the people of Cleveland, not dismiss them.

The Taxpayers request that the Law Department act swiftly to rectify the Clerk's refusal to accept the petitions. Cleveland's children deserve nothing less.

Sincerely,



Marc E. Dann



Denna Taylor-Kolis

Mailing Address
PO Box 6031040
Cleveland OH 44103

DannLaw.com
877-475-8100

Physical Address
2728 Euclid Ave Suite 300
Cleveland OH 44115

EXHIBIT 6



City of Cleveland
Frank G. Jackson, Mayor

Department of Law
Barbara A. Langhenry, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 • Fax: 216/664-2663
www.cleveland-oh.gov

May 20, 2019

Via regular U.S. Mail and E-Mail: MDann@DannLaw.com

Marc E. Dann, Esq.
Donna Taylor-Kolis, Esq.
P.O. Box 6031040
2728 Euclid Avenue, Suite 300
Cleveland, Ohio 44103

Re: Taxpayer Demand

Dear Mr. Dann and Ms. Taylor-Kolis,

I have reviewed your May 8, 2019 letter to me and disagree with your legal analysis and conclusions. The papers submitted to the clerk do not constitute a petition for a proposed ordinance because they do not comply with the form required by Ohio law. The Clerk of City Council properly refused to transmit the defective forms to City Council. No legal analysis was required by the Clerk to determine the flaws in the paperwork.

Sincerely,


Barbara A. Langhenry
Director of Law

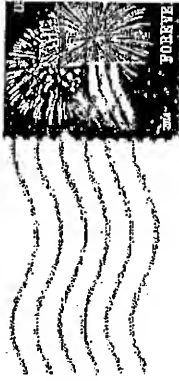
BAL/gss

cc: Patricia J. Britt, Clerk of Council
Kevin Kelley, Council President



City of Cleveland
Frank G. Jackson, Mayor

Department of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077



CLEVELAND OH 44114

20 MAY 2015 PM 3:1

Marc E. Dann, Esq.
Donna Taylor-Kolis, Esq.
P.O. Box 6031040
2728 Euclid Avenue, Suite 300
Cleveland, Ohio 44103

44115-242875

